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ABSTRACT

Two contradictory trends are developing in telecommunications. The first is increased viewing of television by minorities, while the second is decreased attention given to minority issues by the Federal Communications Commission's (FCC) deregulatory stance. Minority groups consume more television than any other social groups, yet television's portrayals of minority groups are becoming increasingly underrepresentative. According to leading researchers, minorities use television for socialization as well as information. This use of a medium that seldom portrays minorities as socially significant poses many societal problems, including possible increases in stratification between races, anomie, and production of knowledge gaps between races. Although communications regulation has traditionally emphasized the importance of promoting minority viewpoints and minority ownership of broadcast outlets, current FCC policy favors deregulation. The FCC would then rely upon market forces to effectuate its public interest regulatory charter, which could be socially irresponsible if done without consideration for the evidence assembled by social science researchers. (Author/DF)

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An interdisciplinary look at minorities and the media: Implications for deregulation

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An interdisciplinary look at minorities and the media: Implications for deregulation

Two contradictory trends are developing in telecommunications. The first trend involves increasing viewing of television by minorities, and the second involves decreasing attention given to minority issues by the FCC's deregulatory stance.

Minority groups consume more television than any other social group, yet television's portrayals of minority groups are becoming increasingly underrepresentative. According to leading researchers, minorities use television for socialization as well as information. This use of a medium that seldom portrays minorities as socially significant poses many societal problems, including possible increases in stratification between races, anomie, and production of knowledge gaps between races.

Although communications regulation has traditionally emphasized the importance of promoting minority viewpoints and minority ownership of broadcast outlets, current FCC policy favors deregulation. The FCC would then rely upon market forces to effectuate its public intesest regulatory charter.

This paper examines the literature of communications research, sociology, and law in an effort to determine the relevance of this body of research to the formation of deregulatory policy. The literature from each discipline reveals that deregulation of the broadcast media has many implications for minority concerns.

Deregulatory policy places the force and legitimation of the rule of law behind the workings of the marketplace. A complete reliance upon market forces could be socially irresponsible if done without consideration for the evidence assembled by social science researchers.

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I. Introduction

Two contradictory trends are evolving in American communications law and policy. The first trend, documented by the discipline of communications research, establishes that minority groups are becoming more dependent upon television -- a medium that often refuses to depict minorities realistically. The second trend, a product of the discipline of legal regulation, reveals that minority interests are being steadily discarded by the Federal Communications Commission -- an agency that has traditionally guarded minority interests. This paper looks at both trends through an interdisciplinary analysis of developments in law and communications, and studies the impact of deregulatory policy on minority groups.

Communications regulation encounters an intriguing paradox when it confronts minority television use and access. Blacks and other minority groups are society's most voracious consumers of broadcast television, yet this overwhelming use of the medium occurs in a context of stark underrepresentation of minorities in television programming. The contrast presents a classic failure of the market system in allocating television programming -- those who spend the most time with the medium are effectively disenfranchised from tailoring it to their needs because of their relative lack of power in the marketplace.

The minority broadcasting paradox presents a societal problem that is of greater magnitude than appears at first glance. Allocation of meaningful access to the broadcast media carries with it strong symbolic messages of societal participation or absence for members of a discrete social group that is depicted by the medium. It is a commonplace that "television absorbs extensive time daily, and is a medium from which children are acquiring their conceptions of social order."[1] Indeed, the United States Commission on Civil Rights has recognized the potential for racial accomodation or polarization that broadcasting implies:

> To the extent that the viewers' beliefs, attitudes and behavior are affected by what they see on television, relations between the races and the sexes may be affected by television's limited and often stereotyped portrayals of men and women, both white and non-white.[2]

Broadcasting shapes societal values and opinions to a degree unrivaled by other communications media, and has a pervasive influence on the lives of Americans.[3] Its impact on racial stratification cannot be overlooked, as the social problem of inequality continues despite gains in relative social position of the classes over the past decades.[4]

The Federal Communications Commission is charged with regulating in the public interest, and this regulatory charter has traditionally included ensuring that minority views are

heard and that minority access to ownership of broadcast outlets is facilitated. "It has long been an established policy of broadcasters themselves and the Commission that the American system of broadcasting must serve significant minorities among our population, and the less dominant needs and tastes [that] most listeners have from time to time."[5] The Commission's policy extends to facilitating minority ownership of broadcast facilities, because "minorities should be fairly represented in the broadcast industry of a society [that] mandates an unrestricted flow of diverse ideas and equal opportunity for all."[6] Preserving access for minority views, then, has been a traditional regulatory concern of the federal government.

This concern has been overshadowed by the recent trend toward communications deregulation. The movement toward "marketplace regulation" advocated by the dominant forces within the Commission allows the strictures of the commercial market to determine allocation of broadcast media access, and would allow broadcast outlets to be purchased by the highest bidder without regare to traditional concerns for minority opportunities.[7] The supporters of the trend toward deregulation justify its laissez faire policies by claiming that the major predicate for broadcast regulation, the scarcity doctrine, has lost its vitality in light of plentiful new communications technologies.

The demise of the scarcity doctrine, however, is open to question on the basis of the economic realities of the new communications media. Just as the lower economic status of many minority groups precludes meaningful participation in the commercial video marketplace, lack of economic power implies an inability to partake of the new communications media -- expensive services such as cable television, direct broadcast satellites (DBS), microwave distribution systems (MMDS) and suscription television (STV) are financially burdensome luxuries to families barely able to stay above the poverty line. Scarcity of communications media may be a continuing reality for minority groups in the United States.

A deregulatory, market-based policy under current economic conditions could have several implications. American society prides itself on its use of a legal system to lessen inequality and social stratification. Pursuit of a regulatory policy that leaves the strictures of the marketplace unchecked in allocation of a resource as valuable to socialization as the communications media may be seen as irresponsible indeed. The results of such a policy could include greater racial stratification, as well as increases in anomie; decreases in status conferral to minorities; and production of a knowledge gap between the classes that can afford high-quality media and those who cannot.

The proper province of government, James Madison argued, lies in regulating to lessen economic differences and disputes that are fostered by social inequalities.[8] Communications regulation has great potential for promoting improvement in race

relations, and this role justifies careful consideration of changes in policy. Such monitoring is critical to the social responsibility held by the Commission;[9] proceeding with a deregulatory policy without consideration of the societal effects of a marketplace posture can hardly be in the "public interest." This paper analyzes the possible effects of deregulation to conclude that such a policy could be contrary to the interests of several critical segments of the American public -- racial and ethnic minorities.

II. The limits and possibilities of FCC regulation

Federal regulation of communications media has evolved from a limited role of technical spectrum allocation to a pervasive system of public-interest regulation. Because communications regulation deals with an aspect of expression, the efforts of the government to distribute equitably the benefits of media use and access must be considered against the backdrop of the first amendment. Broadcasters have limited first amendment freedom; the paramount interest is that of the receipient of communications.[10] The public's interest as receiver of diverse communications has been guarded by varied regulatory mechanisms, as a survey of regulatory justifications will reveal.

A. Traditional regulation and minority emphases

The basis for all regulation of communications in the United States is the Communications Act of 1934.[11] The Act, recently amended by the Communications Policy Act of 1984 (regulating cable television), has been characterized by compromise among the various parties involved -- as was its predecessors.

Regulation started with completely technical attempts to moderate broadcasting. The earliest attempt to regulate broadcasters' use of airwaves was in 1921; then Secretary of Commerce Herbert Hoover remarked that broadcasting "is probably the only industry of the United States that is unanimously in favor of having itself regulated."[12] Voluntary measures and market forces continued to fail to remedy the chaos that characterized broadcasting; the Radio Act of 1927 was the long-awaited legislative response.

The 1927 act established the Federal Radio Commission, which, like the industry it sought to regulate, was to face considerable internal strife. Its staff of twenty workers was faced with as many as 170,000 affidavits from a single typical hearing.[13] The short-lived agency's plight was resolved by the formation of an expanded Federal Communications Commission in 1934. The newer, more powerful agency differed not only in its quantitative allocations but in its qualitative regulatory charter. A major innovation in the 1934 act was an emphasis on long-range planning of social goals.

This emphasis was created by the expansion of the public

interest charter of the agency. The 1934 act expanded the earlier charge to regulate in the "public interest, convenience, and necessity" to require the Commission to study more effective uses of communcations in the public interest and to set long-range goals.[14] In the classic elucidation of the Commission's powers, Justice Frankfurter laid the groundwork for the "scarcity" rationale of substantive regulation:

> We are asked to regard the Commission as a kind of traffic officer, policing the wavelengths to prevent stations from interfering with each other. But the Act does not restrict the Commission merely to supervision of the traffic. It puts upon the Commission the burden of determining the composition of that traffic. The facilities of radio are not large enough to accommodate all who wish to use them. Methods must be devised for choosing from among the many who apply . . . the touchstone provided by Congress was the "public interest, convenience, or necessity . . .[15]

Thus, the Commission is charged with determining who shall be provided monopoly power over a public trust[16] on the basis of service to the public interest.

This public-service responsibility has been readily accepted by the Commission. In its primary determination of the public service required of broadcast licensees,[17] the Commission established that Section 326 of the Communications Act, which prohibits censorship, did not prohibit requiring licensees to act in the public interest. This interpretation has been accorded substantial deference by courts, which agree that the public-service obligations required by the Commission do not violate the first amendment.[18] The public-interest responsibility includes many components, not the least of which involves tailoring broadcasting to serve minority tastes and interests.[19] The requirement that licensees serve minority interests, then, does not run afoul of constitutional protections of broadcasters' free speech; nor do preferences for minority ownership of broadcast outlets.[20]

Ownership of broadcast facilities may permissibly be restricted to effectuate the public-interest purposes of the Communications Act.[21] The Commission's ownership regulations have been upheld by the Supreme Court, which noted that the avoidance of overconcentration is a goal that is reconcilable with the presuppositions of the Communications Act.[22] Diversifiction of control is a "factor of primary significance" in determining who shall be granted a license.[23] Ownership is important, the Court stated, because it "carries with it the power to select, to edit, and to choose the methods, manner, and emphasis of presentation."[24] Ownership regulation is thus a permissible mechanism to effectuate the public interest.

The licensing process has sought to serve the public interest by involving the public in its weighing of the rights

of the affected parties. Chief Justice Burger, while on the District of Columbia Court of Appeals, fashioned an expanded right of participation in broadcast license renewal proceedings that has retained great vitality.[25] The right of the public to participate has been guarded against encroachment from an antagonistic Commission,[26] and has been seen as sufficiently important to strike down a deregulatory policy that could make the exercise of the participatory right more difficult.[27] This participatory mechanism is one means by which the public interest may be directly ascertained in licensing procedures. It is a policy that clarifies the public-trust function of broadcast licensee operation, by allowing public participation in the allocation of private benefits.

B. Evolving regulatory justifications

Broadcast regulation is no longer limited to the justifications of the scarcity rationale. In deciding FCC v. Pacifica,[28] the Supreme Court found two additional justifications for the regulation of broadcast media. First, the "uniquely pervasive" nature of the broadcast media may justify regulation. A broadcast message has the power to reach the unwilling listener in the privacy of her home, unlike other media. Secondly, broadcasting is "uniquely accessible" to children, thus justifying limited content regulation. The evolving regulatory justifications of pervasiveness and accessibility may permit at least minimal regulation even in the absence of scarcity.

The social-impact rationale for broadcast regulation can be traced to a dissent by Justice Murphy in NBC v. United States,[29] a decision in which the majority embraced the scarcity rationale. The dissent also held to the scarcity justification for regulation, but cautioned that broadcasting had "great potenialities as a medium of communication, discussion and propaganda . . . that . . . may readily be a weapon of authority and misrepresentation, instead of a means of entertainment and enlightenment." This social-impact rationale for regulation has come close to realization in Pacifica, and may provide a basis for regulation without spectrum scarcity.

C. The trend toward deregulation

The advent of "marketplace" regulation has been hailed by current Federal Communications Commission leaders as the trend of future media regulation. In a recent exposition of the deregulatory stance, Mark Fowler, Commission chairman, claimed that "technology is an independent variable that makes scarcity a relative concept."[30] Substitutes for over-the-air distribution, such as cable television and the new communications technologies, have emptied the scarcity rationale of its meaning, according to the authors. With an abundance of new technology, Fowler advocates allowing market competition to determine the public's needs and the methods broadcasters may use to serve such needs. Positions in the broadcast spectrum

would be open to bidding; the highest bidder would, in theory, produce the most acceptable service. Consumers would "vote with dollars" to obtain programming they favor. The social-impact regulatory rationale is rejected as "inconsistent with a society dedicated to free inquiry aod expression."[31]

The trend toward marketplace regulation has fared well in judicial tests. In 1981, the Supreme Court allowed the Commission tc cease regulation of radio format changes in favor of relying on the assumption that market forces will produce formats that serve the public interest.[32] In dissent, Justices Brennan and Marshall decried the policy's lack of flexibiliuy and the impossibility of any re-examination of the policy's efficacy. Rather than allowing the Commission to "blindly assume" that market forces would serve the public interest, the dissent would encourage a "safety valve" in case predictions of market efficacy did not prove true.

In a similar manner, the District of Columbia Court of Appeals upheld the majority of the Commission's attempt to deregulate radio.[33] Deregulation was allowed in elimination of quantitative processing guidelines for non-entertainment programming, minimization of formal ascertainment of community issues, and elimination of any limitations on the number of commercials per hour that could be broadcast. The Court did not, however, allow the Commission to eliminate the requirement that licensees maintain programming logs, holding that such logs are imperative to citizens wishing to exercise rights of public participation in license renewal proceedings.

The Court of Appeals required the Commission to show a "reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored."[34] The Commission justified deregulation on the basis of an increased number of radio stations in operation (from 583 stations in 1934 to 8,654 in 1984) and radio's status as a "secondary medium" to television. A "bedrock obligation" that each station discuss matters of interest to its community was said to remain. On a remand to the Commission to reconsider elimination of logging requirements, the Commission again determined that it should eliminate program logs.[35]

1. Deregulation and minorities

Although the Commission asserts that minorities will continue to be served efficiently by broadcasters in the absence of any regulation because "these groups represent growing market forces and attractive new markets to advertisers," this view plainly ignores the lesser socioeconomic status of many minority groups. After empirical study of minority group power over broadcast changes, Hammond[36] concludes that minorities in the United States are not a prime audience for advertisers. "Voting with dollars" and marketplace participation are impossible for groups without sufficient amounus of money to make their "votes" heard.

Further, the responsiveness of the current owners of the video marketplace to minority concerns may be effected by the concentrated structure of corporate communications ownership. Few facilities are owned or managed by minorities; both broadcasting outlets and new technologies are concentrated in the hands of white-dominated corporations. Of 748 television stations, 495 are owned by 165 entities -- an average of three each.[37] More alarmingly, new technologies are characterized by increasing concentration. There are 4,600 cable outlets with 25 million subscribers in the United States; 50 companies reach 72 percent of all subscribers. In fact, 40 percent of all cable television subscribers in the United States are reached by the top eight companies.[38] Such massive corporate structures could be less than responsive to provision of minority views that could be unprofitable in terms of c[illegible]al revenues.

The trend toward deregulation means an increase in reliance upon market forces. Such forces are difficult to harness without monetary clout. Lower-income groups could easily be foseclosed from effective participation in the marketplace because of their relative inability to command the monetary power needed to make their needs felt in the commercial market. Deregulation, then, could mean a sharp decline in provision of programming produced by or for minority groups; this decline could be coupled with an increase in programming tailored for majoritarian interests. Diversity in programming could suffer, at the expense of minority groups who rely on television to a greater extent than any other societal group.[39]

Deregulation also means ownership of communications outlets by those who may best bid for their use. Minority ownership incentives, under a pure marketplace scheme, would be eliminated. With the pre-existing underrepresentation of minorities in ownership or management positions and the difficult task of raising capital to purchase enormously expensive communications outlets,[40] the trend toward marketplace regulation could imply a concomitant trend toward majority control of communications outlets.

Under either scenario, the short-term victims are the minority groups that have fought to be included in the American cultural and economic vistas long taken for granted by whites. Over the long term, the loser is the American public as a whole, which stands to lose a great potential source of diversity in programming.

III. Minorities and telecommunications

Many social problems could flow from a societal milieu in which certain minority groups are heavy consumers of a communications medium that depicts them as societally insignificant. This section will elucidate the minority paradox of television use and portrayals; consequences of inequality will be seen later.[41]

A. Minority television use

It should be noted at the outset that there are significant opportunities for positive use of television among minorities. As Block[42] has observed, the mass media do reach the urban black community; further, blacks are favorably disposed toward the use of the medium. Television ownership is high among black households. Similarly, Greenberg and Dervin[43] find that blacks do have significant access to television, and that television is believed to represent reality to many urban blacks. The medium, then, has the potential to communicate effectively with the urban black community.

This access and favorable disposition combine to produce a striking tendency to consume television programming in massive amounts. The trend toward great minority use of television was noted in 1963 by Steiner[44] and elaborated ten years later by Bower[45] The latter study found that blacks liked television substantially more than whites, and spent much more time with the medium. A comprehensive study by Bogart[46] compared black media exposure to that of whites; he found that the substantial differences between the races cannot be explained in terms of differential social positions and geographic location. Bogart concludes that differences in media exposure must be explained in terms of black media behavior as a distinct social experience. Bogart's conclusions could be challenged in light of later studies by Allen and Bielby,[47] who find that black television exposure does follow traditional education-level detesminants, similar to that of whites. Their study found that higher exposure existed among blacks of less education, contrary to the trend established by Bogart and Bower that showed exposure increasing slightly in black households of higher education levels. The tendency toward greater exposure by blacks in general was shown by Lyle[48] to be in place by early childhood. The research clearly establishes that blacks, as a group, spend a great deal of time with television and hold favorable attitudes toward television.

The uses to which blacks put television differ markedly from uses noted among white audiences.[49] In the area of public-affairs and news programming, the differences are great. Blacks tend to use television more for such programming than any other medium.[50] In a direct comparison to white audiences, Stroman and Becker[51] found that blacks are more likely than whites to rely on television for political news and information. Indeed, blacks have been shown to choose television to discover information about other blacks.[52] Even though blacks choose television as a source of information,[53] research has shown that blacks watch less news and public-affairs programming than do whites.[54] Findings of Israel and Robinson concur in this finding, but qualify it by adding that viewing of news is high among college-educated blacks. In contrast, the authors found that blacks of other educational statuses view a great deal of violent television rather than public-affairs programming.

Although it appears that blacks and other minorities are becoming more selective consumers of television programming,[55] certain broad patterns of consumption have been established. Blacks rate television highly as a leisure activity.[56] Blacks view more than whites outside prime-time hours,[57] but tend to conform to patterns in the overall population in other aspects of viewing. One major difference, however, is the manner in which television is used as a socializing agent for sex-role and familial functions in black development.

This use of television in social development could imply great influences of television over time. Fletcher[58] found that black and white children have divergent programming preferences, with blacks preferring programs in which the central character has no mate. As the child moves into adolescence, however, preferences shift to shows in which a family unit is depicted.[59] The hypothesis is that blacks from a single-head-of-household culture utilize television to learn about perceived mainstream family life; recent evidence suggests that black children choosing such programming hold strong beliefs that the programming conforms to reality.[60] Similarly, Gerson[61] finds that black adolescents use television to acquire norms, information, and general socialization patterns.

The uses to which minorities put television, then, are fundamentally different from those found among the white population. Although the research bears most heavily upon examination of blacks -- the largest and most visible minority group -- studies show that black uses are representative of the media experience of other minority groups.[62] Overall, the experience of television use is both quantitatively and qualitatively different for social groups in the minority and those in the majority.[63]

B. Portrayals of minorities on television

Although minority groups prefer television programming featuring minority characters,[64] the medium seldom accomodates such a preference. Blacks and other minorities are clearly underrepresented in television programming. This absence of minorities is significant when considered in tandem with the heavy use and socialization function television serves for blacks; the stunted development of black characters in meaningful roles can be seen as a form of social control supporting the established order.[65] This rather extreme view, although colored by an ideological component, can be understood in light of research on the minority television experience.

The underrepresentation of blacks in programming was noted as early as 1954;[66] the startling pattern revealed by later studies shows that black portrayals increased somewhat during the early 1970s, but have decreased significantly since then. Black portrayals decreased from 6 percent of total roles in 1971 to 5.2 percent in 1973; a similar decrease is found from 1973 to

1980.[67] Other minorities decreased even more sharply, from 12.4 percent of total roles to 8.7 percent. The percentage of white characters rose from 81.6 percent to 86.1 percent. Considering that 11.7 percent of the population is black, the studies conclude that blacks and minorities are significantly underrepresented in television programming.

This finding is buttressed by an analysis of the types of roles blacks and minorities are given when they do have the opportunity to appear -- 91.8 percent of black men appeared in minor roles in 1980, up from 80.8 percent in 1970. Major roles for black women plummetted from 9.6 percent to 2.4 percent. Similarly, Seggar and Wheeler[68] found that blacks are underrepresented and appear in demeaning roles when present. Reid[69] reached the same conclusion, noting that black portrayals follow stereotyped role categories. A 1983 study found that affluent classes dominated television portrayals, to the expense of more realistic portrayals of socioeconomic strata.[70]

The analysis holds for all types of programming categories. Seggar[71] noted the pattern of exclusion in prime-time programming. O'Kelly and Bloomquist[72] show that the trend toward exclusion of minorities exists across all programming categories -- of 2,309 characters analyzed, only 4.9 percent were black. The trend is documented in daytime drama as well; a 1982 study by Greenberg[73] established that black presence in daytime television is dwindling. Of 301 characters studied, less than 3 percent were non-white, compared to 4 percent six years earlier. The trend in minority television portrayals, then, is not an improving picture. Despite critical awareness of a massive exclusion of blacks from network programming, the isolation of non-white races continues.

Underrepresentation is not limited to entertainment programming. In much news and public-affairs programming, blacks are relegated to minor roles. Although a 1973 study[74] found that race relations as an issue was covered in a balanced manner during a "typical" week of news programming by the networks, analyses of particular incidents in which tensions were high reveals no such objectivity. In an analysis of media coverage of a particular racial crisis, Warren[75] found that coverage of the race issue tended to exacerbate racial polarization. In less volatile race-relations contexts, media coverage of blacks and black issues has been found to be lacking in both quality and quantity. The National Advisory Commission on Civil Disorders[76] found that coverage of black life in general has failed to communicate the antecedent factors that precipitated racial conflict. Similarly, a 1975 study[77] found that black viewpoints are seldom expressed on network television newscasts. Lack of minority viewpoints exists in all quarters of television programming.

The overall picture of minority television portrayals is a grim one. Although the problem is one that is widely

acknowledged, opportunities for black appearances are declining rather than improving.

C. Minority ownership of broadcast outlets

The Commission has traditionally encouraged minority ownership of bsoadcast facilities, and has used its policy powers to make minority ownership feasible. The minority community continues to be underrepresented among broadcast station owners; minimizing this inequality is important to the Commission because "minority ownership would increase diversity of opinion and viewpoints, and thus further Commission policy."[78] Minorities constitute 20 percent of the population of the country, a Commission task force has noted, but such groups control less than one percent of the 8500 broadcast outlets in the United States.[79] Policy favoring minority entrance into the communications market, then, is justified by reference to the public-interest standard and should not be considered offensive to the first amendment rights of competing broadcasters.

First amendment rights rest upon the assumption that the most varied dissemination of ideas from the most diverse sources is essential to the public welfare.[80] The Commission has built on such assumptions to hold that "diversification of control is a public good in a free society, and is additionally desirable where a government licensing system limits access by the public to the use of radio and television facilities."[81] The District of Columbia Court of Appeals has unambiguously found that the need for diverse sources of information is a "very significant aspect" of the public interest in communications regulation.[82] Although non-minority programmers may pledge to tailor broadcasting to minority tastes, the Commission has placed reliance on ownership as a major determinant of content favorable to minority groups.[83] Concern for minority-oriented content and minority ownership has certainly been a traditional aspect of federal communications regulation.

D. Consequences of minority exclusion from telecommunications

The two trends observed in minority use of television -- greater time and greater faith given to the medium, and lesser representation in quality and quantity of portrayals -- could combine to produce several social ills. The lack of minority ability to influence programming choices through ownership of broadcast outlets exacerbates the problem. The greater willingness of minority audiences to believe that television represents reality points up a potential problem: the reality in which the minority audience is willing to accept as representative of reality is one in which minorities are excluded or denigrated. Given the socialization function television serves for minority audiences, the social consequences of the convergence of these trends are significant.

Heavy viewing of television, standing alone, produces or is

associated with several undesireable social tendencies. Gerbner[84] found that heavy viewers are more likely to overestimate the likelihood of being involved in a violent incident than light viewers; Baker and Ball[85] came to similar conclusions. Increases in viewing tend, understandably, to produce a more paranoic attitude toward modern life -- although the chances of a violent incident occurring in most cities approaches one in 50, the chances for such an attack in television reality is closer to 50 percent. A 1981 study[86] found that heavy television viewing produced marked increases in anxiety and fearfulness among viewers, a result corroborated by a 1980 study by Gerbner.[87] These studies are consistent with findings by Hazard[88] that higher levels of anxiety are associated with high levels of television viewing. Heavy viewers have also been found to be more interpersonally passive and withdrawn, although no causal inferences were reached by the study.[89] Heavy viewing alone, then, produces sociopsychological concerns; these problems can translate into social effects.[90]

These effects of heavy viewing could be particularly harmful to minority audiences, because of a high degree of reality correspondence attributed to television portrayals by minority audiences compared to white audiences. Rating television as representative of reality is positively correlated with minority status[91] as well as with amount of television viewing.[92] Greenberg and Reeves[93] find that children of lower socioeconomic status are more likely to believe that television violence was true to reality. The implications of these findings point to a clear possibility of greater influence of heavy-viewing effects on a minority audience that is predisposed to believe in the truth-value of television portrayals.

In addition to these effects, other social effects could arise from increasing minority use of a medium that is becoming less representative of minorities in portrayals and ownership patterns. These social effects will be discussed along with other possible consequences of legal approval of inequality in distribution of communications.[94]

Overall, the situation of minority media use presents a social dilemma.[95] Although media can operate to forge minority identities, it can also operate to exacerbate differences in class structure. The incidence of either effect is determined by the quality and quantity of media attention given to minority groups.

There is no reason to anticipate that the trend toward greater minority viewing and less representative portrayals will be mitigated by social adaptation among audiences. If anything, the problem will become a more salient one; recent studies show that younger blacks are relying even more heavily on television and are becoming more convinced of its importance in their lives.[96]

IV. Social stratification and media regulation

The relationship between law and social stratification is a critical one. Law has the innate capability of reordering other social institutions and reducing the distance between classes; it is, however, limited in its capability to do so by other social factors.[97] American law prides itself upon its attempts to redistribute resources in accordance with conceptions of social justice, as the path of American constitutional law illustrates. Yet, studies show that the proportionate wealth between social strata was virtually unchanged during the first sixty years of this century -- a period during which law undertook great strides in search of social equality.[98] Such correlations lend credence to Black's theory that law acts to consolidate and maintain social stratification.[99] This need not, however, be a continuing reality.

Law may reduce stratification by "altering social interaction and perceptions of human worth," especially through laws that "enhance the perception of reciprocity, mutual gain, and human dignity across stratum lines."[100] This approach to reducing stratification through law is particularly suited to race relations and communications regulation.[101] As Greenberg points out, the administrative process may be particularly well suited for efforts to reduce differences between races. Although it is well-documented that regulation gravitates to the accomodation of the entities it seeks to regulate,[102] a concerted effort to utilize the regulatory process for public interests can accomplish social goals.[103]

This section will investigate social stratification, and consider the role of communications regulation in minimizing or exacerbating the differences between social strata.

A. Principles of stratification

Theories of social stratification attempt to explain the class-based inequality that characterizes social structure, and to determine the consequences and causes of institutionamized injustice.[104] The beginnings of stratification theory can be traced to Marx,[105] Durkheim,[106] and Weber.[107] Weber created the concept of life-chances -- the way in which property is distributed creates opportunities; the common holding of these opportunities is a defining factor of social classes. The concept of life-chances is central to the present inquiry: the issue becomes whether media access and ownership is a life-chance that is distributed unequally by market forces, and whether this inequality is serious enough to merit government intervention.

Early theories of stratification held that stratification is a societal necessity if rights and benefits are unequally distributed. Stratification is a device by which societies use a system of differential rewards to ensure that important positions are properly filled.[108] Other formulations, however,

find that stratification and inequality are not societal necessities; other measures perform the functions of inequality without the concomitant injustices.[108]

Later theories extend the analysis to hold that systems of stratification distribute favorable self-images across a population, just as they distribute economic benefits.[109] Such formulations conclude that "to the extent that participation and apathy depend on the sense of significant membership in society, social stratification systems function to distribute the motivation to participate unequally in a population." This sense of societal participation may be a tool by which lower classes are held in check by powerful elites; institutions such as the media operate to legitimate an elite group's power and to create a consensus favorable to the existing social order.[110]

1. Mass media

The media are important to stratification analysis on at least two fronts: by decreasing portrayals of lower classes, the media presents a scenario in which lower classes are denied significant membership in society; and by legitimizing the existing social structure, the media facilitate the exercise of power by an elite group.

Media can also act as a stratification agent when different social classes utilize different modes of communications. Control of more prestigious forms of cultural communication by higher classes may strengthen a general system of class stratification.[111] As such access bears upon social problems and issues, the class in control of the medium may influence the way issues and problems are formulated and solved:

> The information an individual possesses will to a great extent determine the decisions he makes. If the channels through which one group of individuals receives information are characteristically different from those of some other group, then the two groups are likely to possess different perspectives and differing amounts of information over the same decision areas.[112]

If the mass media are structured in such a manner as to provide social groups with differential access to information on the basis of income, then, the media may reinforce and strengthen the stratification system.

2. Race relations

The media's function as an agent of stratification may be particularly salient when applied to the issue of race relations. As previous sections have shown, great differences exist between both black and white media use and black and white media portrayals. One study has suggested that stratification between races in the United States might explain the differences

in media use; "media habits and attitudes varied far more as a function of social stratification than of respondent ethnicity."[113] However explained, it remains established that the races differ in their reactions to mass media. These differences may combine to make communications regulation a particularly effective area in which to minimize stratification.

Racial stratification exists on a large scale in American society. Although vast gains in legal status, income, education, and occupational possibilities have been made since emancipation, the relative position of blacks in society has not changed - black gains are offset by corresponding white gains.[114]

Changing the discriminatory nature of social attitudes is critical; once a population has been a target of discrimination, it is confined to certain roles and is denied access to some scarce resources.[115] It has been noted that modern mass communications have the capacity to produce "a voluntary change in attitude or action" of an audience.[116] If this capability is used effectively to change the mindset of citizens predisposed to discriminatory attitudes, racial stratification could be decreased.

Market forces, as previous sections noted, have not produced meaningful black programming. Whether market forces may direct media attention to the possibilities of changing the discriminatory mindset held by many is a doubtful proposition, in light of the dismal failure of the market in remedying the effects of discrimination. Empirical research has shown that "private property, economic competition, and economic growth have not brought about, and do not necessarily lead to, economic equality."[117] At this date, it cannot be said that the vestiges of a past caste system are responsible for current discrimination; it appears that the market economy has also worked in a manner that is consistent with continuing racial inequality.[118] The ongoing debate is whether social problems arise from government meddling in an efficient competitive market or whether the problems arise from market failures necessitating government intervention. Reich concludes that the market has indeed failed to minimize racial stratification, largely because of the failings of the neoclassical economic theory on which it is based.[119] As in other areas of discrimination, market forces may have to be prodded into compliance by at least minimal government regulation.

3. Law

Whether such minimal regulation can be societally effective will be a function of the capability of law to provide for greater equality among social strata. Law has, in the past, provided for legitimization and institutionalization of the interests of

alienated groups in society.[120] There is a tension, however, between this capability and the interests of the dominant forces within society: "the more powerful segments of society will expect the legal order to preserve existing inequalities by selectively protecting private activity from government interference."[121] The process of federal regulation, with its public access provisions,[122] may be an effective mechanism by which the less powerful segments of society can raise their voices.

The regulatory arena may be especially fit to the task of accomplishing greater racial equality among social strata. Unlike the litigation process, finding representation for public interest regulatory action is not difficult; several public access communications law firms exist in Washington alone. The cost of even private-sector representation can be less burdensome because of the Equal Access to Justice Act.[123] Finally, the dynamics of the regulatory process may be more conducive to minority claims. The greater the passivity of the institution, the more reliance the decisionmaker places on the parties and a greater advantage may accrue to the economically dominant party.[124] Generally, a regulatory agency is a less passive institution than a court; specifically, the Federal Communications Commission is charged with taking an active part in aiding a public interest litigant in development of a record.[125] This positive duty should make minority claims especially effective in the regulatory forum.

B. The significance of legal action

Legal action is societally significant in this area for several reasons. Stratification, Weber asserts, is held in place by a system of law and government. If stratification is to be minimized in society, then, law must loosen the grip the stratification system holds over governmental institutions. A failure to take positive action also has societal impact, as it places the government's imprimatur on the existing social circumstance.

The mere fact of government action in a specific area of law may lend legitimacy to the actions of the regulated entities. In the case of telecommunications, "public regulation of the airways lends an aura of legitimacy to private enterprises in radio and television, though the public's control over program content and advertising is minimal."[126] The private (prestige) and public (power) spheres are thus blurred; actions of broadcasters take on the legitimacy of legal approval, even if the legal action behind the behavior of the broadcaster is a deregulatory one.

Legitimation, then, is a function that law performs well. Legitimation is a critical mechanism through which a system of stratification is perpetuated. Legitimation, in this sense, refers to a belief on the part of a majority that

insitutionalized inequality in distribution of resources is essentially right and reasonable.[127] Law, then, has the potential of acting as a major force in the continuation of a stratified society. The function of law as an enabler of stratification is subject to various interpretations. Habermas,[128] for example, finds that displacement of economic crises from the market to the administrative realm can lead to serious challenge to existing patterns of stratification -- once identifiable government officials take action to perpetuate the system of inequality, the system can no longer be blamed on the "invisible hand" of the marketplace. If law is to avoid widespread social disorganization, it should act to minimize social stratification rather than to support the order of institutionalized inequality.

As another major social institution, the media may lend legitimacy to stratification systems. The media are particularly proficient in creating and defining social reality, as previous sections noted; this proficiency can increase the media's ability to lend legitimacy to inequalities. In the process through which structured inequalities become legitimized, individuals' self-evaluations are critical in arriving at the strength of any stratification system's legitimacy.[129] To the extent that self-evaluations are congruent with the distribution of primary resources, a system will be perpetuated. The process that generates self-evaluations operates within the framework of social institutions; the individual's evaluation of himself is based upon implicit comparisons.

The media can play an obvious role in arriving at self-evaluation. By projecting minority characters as minor actors in social settings and portraying them as societally unimportant (or, worse, absent), the media can contribute to conceptions of a lack of self-worth.[130] These conceptions can easily be translated into self-evaluations of one's proper place in society, thus contributing to the legitimation of a system of stratification. Further, the media have an aura of legitimacy due to their status as governmentally regulated entities. In this manner, law contributes twice to legitimizing stratification: once directly, and once by conferring status upon another social institution that, in turn, legitimizes institutionalized inequality.

In addition to its legitimation action, law has a strong symbolic value in society. Legal symbols attach to social institutions and to the values that such institutions typify.[131] Legal principles are identified with social justice. The symbolic value of law is so strong that it becomes a "blueprint" for social organization.[132] As applied to a legal policy that allows the market to regulate a media system that typically follows a pattern of minority exclusion, law may carry a clear symbolic message: racial exclusion is approved, to the extent that the law does not see it as a sufficiently important subject for regulatory intervention.

Yet, the possibilities for positive use of the symbolic value of law and its power of legitimation should not be overlooked. As Bazelon[133] theorizes, the power behind law can produce changes of heart and mind, reducing racial tensions. The law of communications regulation can make especial inroads into discrimination and stratification, as it concerns itself with the behavior of an institution that holds great power over citizens' conceptions of social order. If law is to reduce stratification, "it is most likely to do so by altering the perceptions as well as the interactions and exchanges between the strata that compose society."[134] The media possess the power to change perceptions, and, if properly encouraged, may change perceptions of racial prejudices and discrimination. This power of the law could positively reorder social conceptions of justice, and decrease racial stratification.

C. Consequences of legally approved media inequality

The positive possibilities held by law are conditioned, of course, on their use. If the regulatory power of the government stands dormant and relies instead upon market forces to perform its duties, several social consequences could result. Media access would continue to be a life-chance that is distributed unequally amorg the population; as law implicitly approves an inequitable distribution, law would be in a position of helping to maintain or, perhaps, exacerbate the system of social stratification.

1. Social distance

The concept of social distance is a measure of the willingness of people to admit members of other groups in socially intimate situations.[135] Social distance hierarchies reflect cultural guidelines of approved behaviors and relationships.

The cultural rank of minority groups may be established through daily interaction and verbal conventions; "low evaluations may also be supported by degrading representations in the media."[136] Racial and cultural isolation may be exacerbated, then, if the trend toward greater isolation in media representations continues.[137] An increase in the social distance between races could be one result of a strict deregulatory philosophy.

2. Anomie

The term "anomie" originally referred to a condition of relative normlessness in a society or social group.[138] The concept has been adopted by Merton, who uses the term to refer to a social condition in which the institutions of the society place an exceptionally strong emphasis upon goals to be attained without a corresponding emphasis upon socially acceptable means.[139] The condition becomes problematic as the culture exerts pressure upon individuals to obtain goals through other than societally approved means.[140]

Mass communications play a vital role in setting forth the values of a society's class culture.[141] Similarly, a strain toward anomie could be impelled by consistent exposure to large quantities of programming portraying goal obtainment through illicit means. Socially disapproved means are often used to obtain socially desired ends in network television.[142] Violence was used to obtain goals in about half of children's television content studied; the research concludes that television programming presents models for anomie and does not present common values and mores -- "it would appear that a state of anomie is consistently being portrayed on television dramatic programming."

A similar study concludes that television is a powerful force by which viewers are encouraged to conform to middle-class aspirations.[143] Consistent disenfranchisement from the social picture of television programming coupled with consistent encouragement to meet socially desired ends regardless of means used could lead to anomic responses among dedicated minority viewers.

When television implicitly communicates to a minority audience that its members are undeserving of social inclusion in portrayals, greater disregard for social norms and acceptable means could be a likely effect. Class differentials in anomic responses to societal pressures are a documented phenomenon.[144] As measured by the Srole anomie test, members of minority groups are more likely to exhibit pessimism, alienation, and cynicism.[145] Blacks studied by Merton showed great assimilation of success-values inculcated by social culture. This may indicate that minorities are ready targets for anomie; coupled with findings that television is thought to represent reality to many minorities, an obvious implication is that minority groups may be more susceptible to the models of anomie presented by television.

The strain toward anomie in lower socioeconomic classes can explain higher incidences of crime among those classes. "The bitter contrast between the harsh reality of life and blacks' aroused expectations goes far to explain the high rates of black deviance."[146] The role of the media in creating such responses is obvious: "as consumer goods are advertised twenty-four hours a day on radio and television, ghetto residents are constantly reminded of the availability of goods and services which they cannot afford to buy."[147] Increases in anomie perpetuate the stratification system by creating increases in crime rate, which, in turn, induce prejudices and discrimination.[148] A consistent lack of regulatory encouragement of minority programming could exacerbate this trend.

3. Status conferring functions

The government sanctioning of stereotypical portrayals, or, perhaps worse, programming in which minorities are absent, can

have damaging effects on audiences who are willing to believe in the reality of what they see on television. Lazarsfeld and Merton[149] point out that television has the has the power to confer status on social groups it presents. As a powerful social institution, television serves a status-conferring function[150] that can determine what issues and classes of actors are important ones.[151]

When a social group is absent from the consideration of a powerful social institution, a reasonable conclusion for an observer of that institution is that such a group is absent or unimportant in a societal sense.[152] The opposite effect has also been demonstraued -- black children may acquire enhanced self-concepts by being exposed to media content that portrays blacks in featured social roles.[153] Continued exposure to white-dominated social role portrayals could lead to negative self-concepts, the study found, because of implicit understanding of the meaning of an absence of black actors from social settings. Indeed, a lower conception of the social status of blacks by black children could account for the higher imitative value given to white models compared to black models.[154] Viewing stereotypical and underrepresentative minority portrayals on television could have profound social consequences for minority audiences, who believe in television's reality and use the medium to learn socialization patterns.

4. Self-concepts

The effects of institutionalized inequality may not be limited to decreasing one's life-chances; social hierarchies may also influence how one feels about oneself. The self-concept is of social origin; if one is consistently treated as inferior, one may come to internalize and accept this status over time.[155] A cross-national study found a basic cleavage in the self-perceptions of upper- and lower-class citizens.[156] To the extent that the media portray minorities as inferior or socially unimportant, they may contribute to class-based maladjusuments in self-concept.

5. Knowledge gaps

An optimistic view of the power of broadcasting once held that the great increase in the flow of information to the public would help to modify differences of knowledge resulting from inequalities in education and opportunity.[157] Some evidence has shown that such gap-closing can occur in the short run.[158] In the long run, however, the reverse has been shown -- a social group with either superior attention or superior resources gains much more knowledge than do other groups, thus widening the gap between social groups.

The knowledge-gap hypothesis does not hold that lower-status populations remain uninformed, or become more information-poor in an absolute sense. Rather, the hypothesis

holds that higher-status segments of society reap a greater growth of knowledge compared to lower-status segments:[159]

> There is certainly a class bias in attention to "information-rich" sources and strong correlations are persistently found between social class, attention to these sources and being able to answer information questions on political, social, or economic matters.[160]

As higher social classes become able to utilize higher quality communications media from which to glean information, knowledge gaps are widened. The phenomenon has been observed in newspaper-television comparisons,[161] and the same logic could arguably apply to the video information abundance available to those able to pay and the comparative paucity of information-rich sources available through free broadcast television. If lower socioeconomic classes are not able to utilize the information abundance of new communications technologies, greater widths of the knowledge gap could be produced.[162]

In total, it can be seen that both law and mass media contribute to social stratification. Because of the unique nature of the mass media as a social institution, however, positive gains may be made by creative use of communications. If law acts to foster understanding and equality of portrayals, it may decrease racial stratification; if it fails to act responsibly, it may exacerbate social inequality.

V. Conclusion

The empirical evidence establishes that minority groups are uniquely affected by television programming, and that programming is unresponsive to minorities. This paradox has many social effects, including widening the gap between races.

In light of the evidence, the trend toward deregulation of the communications media may be a socially irresponsible policy shift if it is undertaken without attention to the special needs of the minority audience. As the distance between social strata remains vast, all agencies of government that have the capacity to relieve the social tension should carefully examine their policy decisions in light of their societal responsibilities. The Federal Communications Commission has an opportunity to facilitate understanding between races by encouraging minority-congnizant programming. If it is to shirk that opportunity merely to favor a deregulatory economic policy, it may well be in abdication of its responsibility to regulate in the public interest.

A review of the social science literature implies that incentives to serve minority audiences may be valuable to minority audiences, and should survive deregulation. If a licensee must act in the public interest, her responsibility

should be to the entire "public" rather than only to the small section of the public that promises the highest return on the broadcaster's public monopoly.

Similarly, the information inequalities documented by the literature indicate that minority preferences in broadcast ownership should remain and be fully effectuated. The Commission should proceed with all its resources to remedy the startling discrepancy between minority population and minority ownership of broadcast outlets as a means toward facilitating minority involvement in telecommunications.

It is not incongruous to continue regulation in an era when the scarcity justification is under attack. Although many channels are theoretically available, there may be a socioeconomic bias in ability to afford new media. Scarcity may continue as an economic reality for a substantial portion of the American public. The social impact of the broadcast media may also justify minimal regulation even in the absence of spectrum scarcity. None of the new communications media approach the pervasiveness of broadcasting. Even if the scarcity doctrine were not an economic reality, the intrusiveness and prominence of broadcasting would justify holding licensees to the public interest service required of them by Congress.

The Federal Communications Commission has a unique opportunity to serve its regulatory charter by decreasing social stratification. It should not allow ideological biases against governmental intervention to obscure its clear regulatory responsibility to ascertain the social impact of its decisions.

Notes

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2. United States Commission on Civil Rights, **Window Dressing on the Set: Women and Minorities on Television** (Washington, D.C.: Government Printing Office, 1977 and 1979).
3. Krasnow, Longley and Terry, **The Politics of Broadcast Regulation** (New York: St. Martin's, 1982).
4. See, e.g., Farley, **Blacks and Whites: Narrowing the Gap?** (Cambridge, Mass.: Harvard University Press, 1984).
5. Federal Communications Commission, **Public Service Responsibility of Broadcast Licensees** (New York: Arno, 1974).
6. Federal Communications Commission, **Report on Minority Ownership in Broadcasting** (F.C.C.: Washington, D.C., 1978).
7. Fowler and Brenner, A Marketplace Approach to Broadcast Regulation, 60 **Tex. L. Rev.** 207 (1982).
8. **The Federalist** No. 10 (J. Madison).
9. See Deregulation of Radio, 46 Fed. Reg. 13,888, 13,905 (1981); Federal Communications Comm'n v. WNCN Listeners Guild, 450 U.S. 582 (1981)(Brennan and Marshall, J.J., dissenting).
10. Red Lion Broadcasting Co. v. Federal Communications Comm'n, 395 U.S. 367 (1969)(White, J.), stated that "it is the right of the viewers and listeners, not the right of the broadcasters, which is paramount."
11. The Communications Act of 1934, 47 **U.S.C.** s 301 et seq.
12. Krasnow, Longley and Terry, **The Politics of Broadcast Regulation** 11 (New York: St. Martin's, 1982).
13. White, **The American Radio: A Report on the Broadcasting Industry in the United States from the Commission on Freedom of the Press** 200 (Chicago: University of Chicago Press, 1947).
14. See, e.g., 47 **U.S.C.** s 303(g).
15. National Broadcasting Co. v. United States, 319 U.S. 190 (1943).
16. Robinson, Gellhorn and Bruff, **The Administrative Process** 287 (St. Paul, Minn.: West, 1980 & supp. 1983).
17. Federal Communications Commission, **Public Service Responsibility of Broadcast Licensees** (New York: Arno, 1974).
18. Federal Communications Comm'n v. WNCN Listeners Guild, 450 U.S. 582 (1981).
19. Federal Communications Commission, **Public Service Responsibility of Broadcast Licensees** 15 (New York: Arno, 1974).
20. See infra section III(C).
21. 47 **C.F.R.** s 73.35 (1981).
22. United States v. Storer Broadcasting, 351 U.S. 192, 193 (1956).
23. Federal Communications Comm'n v. National Citizens Comm. for Broadcasting, 436 U.S. 775, 781 (1978).
24. Id. at 785.
25. In United Church of Christ v. Federal Communications Comm'n, 359 F.2d 994 (D.C. Cir. 1966), then-Judge Burger found

that "consumers are generally among the best vindicators of the public interest."

26. In United Church of Christ v. Federal Communications Comm'n [II], 425 F.2d 543, 547-48 (D.C. Cir. 1969), Judge Burger hele that "the commission and the examiners have an affirmative duty to assist in the development of a meaningful record . . ."

27. In United Church of Christ v. Federal Communications Comm'n [III], 707 F.2d 1413, 1441 (D.C. Cir. 1983), the Court held that the public's "unassailable right to participate" cannot be "undermined indirectly by [an] inadequately explained refusal to require licensees to make available information on their issue-responsive programming."

28. Federal Communications Comm'n v. Pacifica Found., 438 U.S. 726 (1978).

29. National Broadcasting Co. v. United States, 319 U.S. 190 (1943)(Murphy, J., dissenting). See also Gillmor and Barron, **Mass Communications Law** 779 (St. Paul, Minn.: West Publishing, 1984).

30. Fowler and Brenner, A Marketplace Approach to Broadcast Regulation, 60 **Tex. L. Rev.** 207, 222 (1982).

31. Id. at 229.

32. Federal Communications Comm'n v. WNCN Listeners Guild, 450 U.S. 582 (1981).

33. United Church of Christ [III], 707 F.2d 1413 (D.C. Cir. 1983).

34. Id. at 1425.

35. Second Report and Order, Deregulation of Radio, 96 F.C.C.2d 930 (October 17, 1984).

36. Hammond, Now You See It, Now You Don't: Minority Ownership in an "Unregulated" Video Marketplace, 32 **Cath. U. L. Rev.** 633 (1983).

37. Id.

38. Id.

39. See infra section III(A).

40. One commissioner has noted that the deregulation of multiple ownership rules has a damaging effect on minority ownership. In dissent from a Notice of Proposed Rulemaking, 95 F.C.C.2d 360 (1984), Commissioner Rivera stated:

> Elimination or substantial relaxation of the seven-station rule is likely to seriously impair entry and participation by all but very large media conglomerates, contrary to this well-founded policy [of diversifying the pool of broadcast owners]. This is so because in the new, post-rule environment, these conglomerates will bid up the prices of stations in most markets significantly. So far up, in fact, that new entry by those with more limited resources will be all but impossible.

Id (footnotes omitted). The commissioner noted that "rigid reliance on the free market philosophy is extremely hazardous in the sensitive domain of broadcast ownership and expression."

41. See infra section V(C).

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43. Greenberg and Dervin, **Use of the Mass Media by the**

Urban Poor (New York: Praeger, 1970).

44. Steiner, **The People Look at Television** (New York: Knopf, 1963).

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46. Bogart, Negro and White Media Exposure: New Evidence, 49 **Journalism Quarterly** 15 (1972).

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48. Lyle and Hoffman, Explorations in Patterns of Television Viewing by Preschool-Age Children, in Rubinstein, Comstock and Murray, **Television and Social Behavior**, Vol. 4 (Washington, D.C.: Government Printing Office, 1972).

49. Carey, Variations in Negro/White Television Preferences, 10 **Journal of Broadcasting** 199 (1966).

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51. Stroman and Becker, Racial Differences in Gratifications, 55 **Journalism Quarterly** 767 (1978).

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53. Robinson, The Audience for National Television News Programs, 35 **Public Opinion Quarterly** 403 (1971); Tan and Tan, Television Use and Self-Esteem of Blacks, 29 **Journal of Communication** 129 (1979).

54. Israel and Robinson, Demographic Characteristics of Viewers of Television News Programs, in Rubinstein, Comstock and Murray, **Television and Social Behavior**, Vol. 4 (Washington, D.C.: Government Printing Office, 1972).

55. Department of Commerce, **Social Indicators 1976** (Washington, D.C.: Government Printing Office, 1977).

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57. Bogart, Negro and White Media Exposure: New Evidence, 49 **Journalism Quarterly** 15 (1972).

58. Fletcher, Negro and White Children's Television Programming Preferences, 13 **Journal of Broadcasting** 359 (1969).

59. Greenberg and Gordon, Racial and Social Class Differences in Teen-Agers' Use of Television, 13 **Journal of Broadcasting** 331 (1969); Surlin and Dominick, Television's Function as a "Third Parent" for Black and White Teenagers, 15 **Journal of Broadcasting** 55 (1970).

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61. Gerson, Mass Media Socialization Behavior: Negro-White Differences, 45 **Social Forces** 40 (1966).

62. Ericksen, Hispanic Americans and the Press, __ **Journal of Social Issues** ___ (1984).

63. See infra Section V(C)(consequences of differences).

64. Dates, Race, Racial Attitudes and Adolescent Perceptions of Black Television Character, 24 **Journal of Broadcasting** 549 (1980); Greenberg and Hanneman, Racial Attitude

and the Impact of Television Blacks, 4(2) **Educational Broadcasting Review** 27 (1970).

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68. Seggar and Wheeler, World of Work on Television: Ethnic and Sex Representation in Television Drama, 17 **Journal of Broadcasting** 201 (1973).

69. Reid, Racial Stereotyping on Television: A Comparison of the Behavior of Both Black and White Television Characters, 64 **Journal of Applied Psychology** 465 (1979).

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71. Seggar, supra note 71.

72. O'Kelly and Bloomquist, Women and Blacks on Television, 26 **Journal of Communication** 179 (1976).

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79. Id.

80. Associated Press v. United States, 326 U.S. 1, 20 (1945).

81. Federal Communications Commission, **Report on Minority Ownership in Broadcasting** 4 (Washington, D.C.: F.C.C., 1978).

82. Citizens Communication Center v. Federal Communications Comm'n, 447 F.2d 1201, 1213 n.36 (D.C. Cir. 1971).

83. TV9, Inc. v. Federal Communications Comm'n, 495 F.2d 929, 938 (D.C. Cir. 1973), cert. denied, 419 U.S. 986 (1974).

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116. Anderson, **Persuasion: Theory and Practice** 23 (Boston: Allyn and Bacon, 1971). See also Smith, **Persuasion and Human Action: A Review and Critique of Social Influence Theories** (Belmont, Calif.: Wadsworth, 1982)(rejecting strict stimulus-response theories in favor of introducing "the perception of choice as a defining characteristic of persuasive communication").

117. Rossides, supra note 111, at 171.

118. Reich, **Racial Inequality: A Political-Economic Analysis** 305 (Princeton, N.J.: Princeton University Press, 1981).

119. Id. at 174-203.

120. Schwartz, Law, Violence and Civil Rights, in Schwartz and Skolnick, **Society and the Legal Order** 512 (New York: Basis Books, 1970). Examples of such law-fostered equities include the legitimization of labor unions, German religious communities (gemeinde), and resistance groups in South Arabia.

121. Unger, **Law in Modern Society: Toward a Criticism of Social Theory** 69 (New York: Free Press, 1976).

122. See United Church of Christ v. Federal Communications Comm'n, 359 F.2d 994 (D.C. Cir. 1966).

123. The Equal Access to Justice Act, 94 Stat. 2325

(1980), allows an agency or court to grant attorneys' fees to successful public interest litigants. The Act was adopted by the Federal Communications Commission in 1982. See Equal Access to Justice Rules, 47 Fed.Reg. 3785 (1982). See also Rules Providing Limited Assistance to Indigent Intervenors, 41 Fed.Reg. 53,019 (1976).

The regulation is based on the premise that some potential litigants are "deterred from seeking review of, or defending against, unreasonable governmental action because of the expense involved." The need for reimbursement in public interest agency litigation was aptly stated by Chief Justice Burger:

> Always a restraining factor is the expense of participation in the administrative process, an economic reality which will operate to limit the number of those who will seek participation; legal and related expenses of administrative proceedings are such that even those with large eceonomic interests find the costs burdensome.

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